

1955
September 22

Brigadier General John Jacobson, Jr., TAG
The Adjutant General
State Military Reservation
Airport Road
Concord, New Hampshire

Dear Sir:

This is in reply to your letter of
September 19, 1955.

It appears that the suit in question is one in which an enlisted man is being sued in his private capacity. The State is not a party to this action, could not without its consent be made a party to it, Bow v. Plummer, 79 N.H. 23; and no agency short of the Legislature could give such consent, Rothrock v. Loon Island, 96 N.H. 421.

The State, then, has no such legal interest in the suit as to require the intervention of the Attorney General for its protection. Nor is the defense of the soldier's private property against a judgment in due course of law in the courts of this State a matter of such public concern as to authorize the expenditure of public funds therefor. Finally, it does not appear that the subject matter of the suit is such as to endow it with a special public concern. Compare RSA 110:82 (R.L., c.143, s.83).

In answer to your inquiry, then, we reply that the individual under consideration is not entitled to be represented in the action brought against him in his private capacity at the expense of the State.

Your file in the matter is returned.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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